

ADMINISTRATIVE APPEAL OF	:	Order Docketing and
DEL BERT HOLLEY	:	Dismissing Appeal
	:	
v.	:	IBIA 77-20-A
	:	
EASTERN NEVADA TRIBAL SOCIAL	:	
SERVICES	:	January 24, 1977

Del Bert Holley, through his attorney, Michael David Cox, Nevada Indian Legal Services, has filed a request that the Board take jurisdiction of the appeal herein and render a decision thereon pursuant to 25 CFR 2.19.

The appeal is hereby docketed, considered, and disposed of this date.

The request, filed with the Board on January 13, 1977, must be denied and dismissed in light of the fact that the Commissioner, Bureau of Indian Affairs, under date of January 10, 1977, rendered a decision on the appeal which is final for the Department. Accordingly, this Board is without jurisdiction to grant the relief requested by the appellant. A copy of the Commissioner's decision is attached hereto.

NOW, THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the request of Del Bert Holley be, and the same is hereby, denied and dismissed for the reasons hereinabove set forth.

Done at Arlington, Virginia.

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Alexander H. Wilson  
Administrative Judge

I concur:

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Mitchell J. Sabagh  
Administrative Judge

Attachment

United States Department of the Interior  
Bureau of Indian Affairs  
Washington, D. C. 20245

Social Services

Jan 10, 1977

Mr. Delbert Holley  
Box 209  
Battle Mountain, Nevada 89820

Dear Mr. Holley:

This refers to your appeal to the Commissioner of Indian Affairs concerning the decrease in your general assistance payment as determined by the Eastern Nevada Tribal Social Services Program.

We have reviewed the information and related documentation regarding your appeal. We regret very much the inordinate length of time required to complete this review and offer our apology to you for any inconvenience this delay may have caused.

We find the June 3, 1976, decision of the Superintendent, Eastern Nevada Agency, and the subsequent July 19, 1976, decision of the Area Director, Phoenix, relative to denial of your appeal to be appropriate and correct. We concur with and sustain their denial of your appeal.

The specific section of the Bureau's manual which cites the method by which your payment was computed is contained in 66 IAM 3.1.7A.

"The State Public Assistance standard governing basic consumption and special need items with their corresponding money amounts which is currently in effect in the State where an Indian general assistance applicant lives will be the basis for exploration and assessment of his need. If the State's assistance standard provides for differences in the several categories of public assistance, the standard for the category which most closely resembles the applicant's individual or family situation should be applied.

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. . . The established money amounts or methods for determining the cost of items specified in the State standard shall be applied in the determination, unless a need item is available without cost or is inapplicable to the individual or family."

Your payment was correctly computed by using the Nevada State assistance standard rather than the modified standard utilized temporarily by the Eastern Nevada Tribal Social Services Program for experimental purposes.

Our denial of your appeal is based upon the exercise of discretionary authority by the Commissioner of Indian Affairs. As such, our decision is final for the Department of the Interior.

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Sincerely yours,

/s/

Commissioner of Indian Affairs